

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUCYNA KOBOS

Plaintiff,

MEMORANDUM AND ORDER
2:15-cv-5573 (DRH)(SIL)

- against -

TARGET CORPORATION and AMY
MARTINEZ,

Defendants.

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APPEARANCES

LAW OFFICES OF JOEL M. GLUCK

Attorney for Plaintiff
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By: Joel M. Gluck, Esq.

SEYFARTH SHAW LLP

Attorneys for Defendant Target
620 Eighth Ave.
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By: Scott Roblan Rabe, Esq.
Alnisa Shakirah Bell, Esq.

HURLEY, Senior District Judge:

By Order dated June 12, 2018, the Court granted Target Corporation's motion to dismiss and Plaintiff Lucyna Kobos ("Plaintiff") consented to dismiss the action against Defendant Martinez on the basis of insufficient service of process. On July 12, 2018, Plaintiff filed a Notice of Appeal. On August 15, 2018—over a month later—Plaintiff requested permission to proceed *in forma pauperis* on her appeal to the Second Circuit. For the reasons that follow, the application is denied.

DISCUSSION

I. Standard of Review

A motion to proceed *in forma pauperis* on appeal must be made in the first instance to the district court. *See Fed. R. App. P. 24(a)*. An appeal may not be taken *in forma pauperis* if the district court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); *Fed. R. App. P. 24(a)(4)(B)*. The Second Circuit has instructed:

Generally an application for leave to appeal *in forma pauperis* will have sufficient substance to warrant consideration only if, in addition to an adequate showing of indigence and of citizenship, it identifies with reasonable particularity the claimed errors which will be the basis for the appeal. If these requirements are satisfied, and if on consideration the trial judge is conscientiously convinced that there is no substantial question for review and that an appeal will be futile, or if he is convinced that there is no reasonable basis for the claims of alleged error, it is the duty of the trial judge, albeit not a pleasant duty, to certify that the appeal is not taken in good faith.

United States v. Farley, 238 F.2d 575, 576 (2d Cir. 1956) (internal citations and quotation marks omitted). ““This threshold level for permitting persons to proceed *in forma pauperis* is not very great and doubts about the substantiality of the issues presented should normally be resolved in the applicant’s favor.”” *Bishop v. Henry Modell & Co.*, 2010 WL 1790385, at *1 (S.D.N.Y. May 4, 2010) (quoting *Miranda v. United States*, 458 F.2d 1179, 1181 (2d Cir. 1972)). “Nevertheless, ‘good faith is judged by an objective standard, and if an appeal is frivolous it is not taken in good faith.’” *Bishop*, 2010 WL 1790385, at *1 (quoting *Gomez v. United States*, 371 F. Supp. 1178, 1179 (S.D.N.Y. 1974)).

II. Plaintiff’s Request to Appeal In Forma Pauperis is Denied

Here, Plaintiff’s application to proceed *in forma pauperis* does not include any of “the claimed errors which will be the basis for the appeal.” *Farley*, 238 F.2d at 576. Rather, Plaintiff simply states that she appeals “from the Order and Decision dated June 12, 2018 dismissing the

case as to Defendant Target Corporation” (Notice of Appeal [ECF. No. 34] at 1 (July 12, 2018).) Given that Plaintiff has failed to present any ground for appeal there is no basis for the Court to grant *in forma pauperis* status for appeal purposes, however, the Court has nonetheless reviewed the record. After careful review, and for the reasons stated in the Court’s June 12, 2018 Order, the Court finds that Plaintiff’s claims lacked merit and were properly dismissed as she was not even able to establish the first element of a *prima facie* case. As such, there is no substantial question for review.

The Court certifies that any appeal would not be taken in good faith and thus the request to proceed *in forma pauperis* on appeal is denied. Further requests to proceed *in forma pauperis* should be directed to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

Dated: Central Islip, N.Y.
August 16, 2018

/s/ Denis R. Hurley
Denis R. Hurley,
United States District Judge